

IN THE COURT OF APPEALS OF IOWA

No. 3-1230 / 13-1693
Filed January 23, 2014

**IN THE INTEREST OF D.H. and R.R.,
Minor Children,**

T.H., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Rachel E. Seymour,
District Associate Judge.

A mother appeals from an order terminating her parental rights.
AFFIRMED.

Nicholas Einwalter, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Christina Gonzalez,
Assistant County Attorney, for appellee.

Jordan Skog, Des Moines, for father.

Nicole Garbis Nolan of Youth Law Center, Des Moines, attorney and
guardian ad litem for minor children.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

McDONALD, J.

Trudie appeals an order terminating the parental rights between her and her children D.H. and R.R pursuant to Iowa Code sections 232.116(1)(d), (e), and (f) (2013). Trudie argues that the State did not prove grounds for termination by clear and convincing evidence and that the court erred in finding that termination of her parental rights was in the best interest of the children.

I.

We review de novo proceedings terminating parental rights. See *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law, and we adjudicate anew those issues properly preserved and presented. See *In re L.G.*, 532 N.W.2d 478, 480 (Iowa Ct. App. 1995). We give weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but we are not bound by them. See *id.* at 480-81. While giving weight to the findings of the juvenile court, our statutory obligation to review termination proceedings de novo means our review is not a rubber stamp of what has come before. We will thus uphold an order terminating parental rights only if there is clear and convincing evidence of grounds for termination. See *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Evidence is “clear and convincing” when there are no “serious or substantial doubts as to the correctness [of] conclusions of law drawn from the evidence.” *Id.*

Termination of parental rights under chapter 232 follows a three-step analysis. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). First, the court must determine if a ground for termination under section 232.116(1) has been

established. *See id.* Second, if a ground for termination is established, the court must apply the framework set out in section 232.116(2) to decide if proceeding with termination is in the best interests of the child. *See id.* Third, if the statutory best-interests framework supports termination of parental rights, the court must consider if any statutory exceptions set forth in section 232.116(3) should serve to preclude the termination of parental rights. *See id.*

II.

Trudie first challenges whether the State proved a ground for termination by clear and convincing evidence. Specifically, she challenges the sufficiency of the evidence supporting termination pursuant to sections 232.116(1)(d) and (e). At the same time, puzzlingly, she concedes that the State proved grounds for termination pursuant to section 232.116(1)(f). We agree the State proved grounds for termination pursuant to paragraph (f). R.R. and D.H. are both four years of age or older: D.H. was born in 2008, and R.R. was born in 2007. The children were adjudicated in need of assistance on August 9, 2012. The children were removed from the physical custody of the mother on May 25, 2012, and were removed for at least twelve consecutive months prior to the termination hearing. Finally, there is clear and convincing evidence that the children could not be returned to the custody of Trudie at the time of the termination hearing. Because Trudie concedes that the State proved termination under paragraph (f), we need not address Trudie's challenges to the sufficiency of the evidence with respect to the remaining paragraphs because "we need only find grounds to

terminate under one of the sections cited by the juvenile court to affirm.” *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Trudie contends that even if the State proved grounds for termination of her parental rights, termination is not in the best interests of the children pursuant to section 232.116(2). In making the determination of whether termination of parental rights is in the best interests of the children, the court must consider the relevant statutory factors. Further:

In seeking out those best interests, we look to the child’s long-range as well as immediate interests. This requires considering what the future holds for the child if returned to the parents. When making this decision, we look to the parents’ past performance because it may indicate the quality of care the parent is capable of providing in the future.

In re J.E., 723 N.W.2d 793, 798 (Iowa 2006) (quoting *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997)).

There is little evidence in this record that deferring the termination of Trudie’s parental rights would be in the children’s best interests. The mother has demonstrated over a long period of time that she does not have any interest in safely parenting these children. In 2008, prior to the time of Iowa Department of Human Services’ (DHS) involvement with this family, Trudie signed an affidavit giving full custody of R.R. to Trudie’s parents. Although they never formalized the arrangement, R.R. remained under the care and supervision of Trudie’s parents and has not resided with Trudie since he was three months old. The family came to the attention of DHS in 2012, after methamphetamine and marijuana, drug paraphernalia, and contraband consistent with drug trafficking were found in the home. Trudie tested positive for methamphetamine. The

children were formally removed from Trudie's custody and then adjudicated in need of assistance pursuant to Iowa Code section 232.2(b), (c)(2), (n), and (o) (2011).

During the pendency of the child-in-need-of-assistance proceeding, the mother has not demonstrated any significant effort to provide for and reunite with her children. She has no work history. During the time of removal, Trudie did not provide any consistent financial, physical, or emotional support to the children. Her physical visits with the children were disallowed because of her behavior and the behavior of one of her partners. She was allowed telephone contact with the children, but that contact was discontinued after Trudie threatened and harassed the children's custodians.

She was instructed that she needed to obtain safe housing and avoid relationships that created a risk of harm to the children. Trudie was unable to obtain stable housing and was homeless on the date of the termination hearing. She has been in a series of intimate and cohabiting relationships with partners with histories of substance abuse and domestic violence, thereby creating a risk of harm to the children. Further, she was dishonest with DHS about her housing and her relationships in an attempt to conceal this information from DHS.

Trudie was instructed to obtain mental health and substance abuse treatment, but only recently started complying with her mental health treatment. She refused to comply with aftercare requirements related to her substance abuse treatment. On at least one occasion, she failed to provide drug screens to the juvenile court. On another occasion, she provided a diluted drug screen.

It is also apparent that Trudie simply fails to understand that her behavior creates any risk of harm to her children. She testified during the termination hearing that she does not think that removal was warranted because her children were not at risk. She testified that her use of illegal substances in the home posed no risk to her children. Likewise, she denied that her numerous relationships created any risk to her children even though D.H. may have been sexually abused by one of Trudie's partners. By way of another example, Trudie testified that D.H. should not have to brush his teeth even though D.H. had to undergo several thousand dollars of painful dental work following removal from the home because his teeth were rotting out.

Finally, the children currently are placed with an aunt and uncle who are willing to adopt them. The children have thrived in their new environment. These children should not have to wait any longer while Trudie tries to get her life in order. See *In re. A.B.*, 815 N.W.2d 764, 778 (Iowa 2012) ("It is simply not in the best interests of the children to continue to keep them in temporary foster homes while the natural parents get their lives together."); *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010) ("We do not gamble with the children's future by asking them to continuously wait for a stable biological parent, particularly at such tender ages."); *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) ("Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable.").

AFFIRMED.